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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA,

Petitioners,

v.

FLORIDA POWER CORPORATION,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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OPINION BELOW

The Petition for a Writ of Certiorari in this case relates only to that portion of the opinion of the Court of Appeals for the Fifth Circuit, reported at 425 F. 2d 1196, where the Court ruled:

> "But in sending this case back to the Commission for it to fix a formula for computing what would be reasonable compensation, we do not even whisper what that formula should be. On reconsideration the Commission may determine that the set demand

charge requested by Florida Power is a reasonable formula. It may determine that the 50 percent-of-the-difference-in-benefits formula of the Presiding Examiner is more appropriate. It may decide to use parts of both, neither formula, or a completely different formula. This is for the Commission subject to later review."

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Respondent does not agree with Petition's statement of the Question Presented and respectfully submits the question should be stated thus:

Whether, in ordering Florida Power Corporation to permit the City of Gainesville to establish physical connection with Florida Power Corporation's transmission facilities, the Federal Power Commission, acting under Section 202 (b) of the Federal Power Act, must provide some formula for reasonable compensation to Florida Power Corporation for supplying the City of Gainesville with extremely valuable emergency backup (standby) service.

The Petition for a Writ of Certiorari filed by the City of Gainesville (Gainesville) misstates the decision of the Court of Appeals for the Fifth Circuit as requiring the Federal Power Commission to include an allowance for benefits received as well as reimbursement for costs. The Court of Appeals did not decide there must be an allowance for or even a sharing of benefits. The Court decided only that there must be some formula for reasonable compensation "for providing an extremely valuable service." The Court carefully left to the discretion of the Commission whether the compensation formula should be based

upon an allocation of costs or a sharing of benefits or something completely different.

Similarly, the Petition for a Writ of Certiorari filed by the Solicitor General misstates the question to be whether the Federal Power Commission must condition the interconnection upon compensation terms based on the relative benefits rather than the relative burdens. The Circuit Court did not decide compensation must be based upon relative benefits. The Court limited its decision to a requirement that there be some compensation formula "for providing an extremely valuable service." The Court stated, "we do not even whisper what that formula should be".

STATUTE INVOLVED

The Petition adequately states or refers to the federal statute involved.

STATEMENT OF THE CASE

To place the question in proper prospective, it is necessary to supplement the Statement of the Case contained in the Petition.

Florida Power Corporation (Florida Power) owns and operates an integrated electric generation, transmission and distribution system (not a bulk power supply system as stated by Gainesville) serving, as of 1966, approximately 370,000 retail customers, 12 municipal distribution systems and 9 REA Cooperatives. Florida Power's generation is provided for the most part by units rated at 527 mw,[1] 525 mw, 404 mw, 232 mw, 125 mw, 125 mw, 88 mw, 84 mw, 80 mw. Florida Power's system includes a large backbone transmission network which, as of Decem-

[1] A megawatt (mw) is a large unit of electric generating capacity. It is 1,000 kilowatts or 1,000,000 watts.

ber 31, 1965, contained 410 miles of 230 kv[2] lines, 1156 miles of 115 kv lines and 1409 miles of 69 kv lines, exclusive of radial (as distinguished from through transmission) lines. Through its backbone transmission network, Florida Power is interconnected with the other four major electric systems in peninsular Florida (Tampa Electric Company, Florida Power & Light Company, Orlando Utilities Commission and Jacksonville Electric Authority),[3] and with Georgia Power Company and Gulf Power Company. In 1970 Florida Power's backbone transmission network will have a depreciated value of about $65 million with annual fixed charges and operating costs of about $13 million (R. 830-32, 957, 2070-4, 2077).

A primary function (estimated at 60%) of Florida Power's backbone transmission network is furnishing system reliability by protecting against loss of a power source by delivering reserve (emergency) power to any point on the system where reserves are required (R. 830-1, 957).

Emergency backup service is providing the reserve of generation which a system must have to protect against inability to supply load in the event of a failure or outage of generation. Generally speaking, it is industry practice to have available a reserve of generating capacity at least equal to the capacity of a system's largest generator. To the extent emergency backup service is available from some other source, a system can reduce its installed reserve of generation. Generally speaking, it also is industry practice to protect against a failure or outage of a sys-

[2] A kilovolt (kv) is a large unit of electrical voltage and a term used in rating transmission lines. Generally speaking, depending upon the size of the conductor, a 230 kv line has a capacity of approximately 350 mw, a 115 kv line has a capacity of approximately 125 mw, and a 69 kv line has a capacity of approximately 50 mw.

[3] These four systems in 1965 had a combined installed net plant generating capability of 5837 mw (R. 1789).

tem's largest generator by operating at all times a reserve of generation (customarily referred to as spinning reserve) equal to the load being carried by the largest generator in operation. The operating reserve of generation, as distinguished from the installed reserve of generation, is called spinning reserve because it must be in operation, i.e. spinning, and be instantaneously available. If the operating reserve of generation is not instantaneously available with a loss in frequency of less than one-half cycle per second, i.e. 1/120th of a second, the system will suffer a frequency disturbance which can cascade, trip out other generating units, and shut down the entire system (R. 289, 296, 848, 1329).

Gainesville owns and operates a small generation and distribution system with a total generating capability of 138.4 mw provided by units rated at 50 mw, 24 mw, 16.5 mw, 12.6 mw, 5 mw, 1 mw and two 15 mw gas turbines. Contrary to the representation in Gainesville's Petition, Gainesville does not own any transmission facilities and has never proposed constructing any transmission facilities, except a loop around the City for internal use only and except 7.5 miles of line to tap Florida Power's backbone transmission network.

The disparity in the sizes of the Gainesville and Florida Power generation and transmission capabilities is striking and highly significant. These disparities in size are increasing each year due to the annual load growth on the Florida Power system being currently almost twice Gainesville's 1966 peak load and in excess of Gainesville's projected 1970 peak load of 102 mw (R. 2079). Gainesville's largest 50 mw generator is dwarfed by generators on the Florida Power system and is about the equivalent of units which on the Florida Power system "are used only to meet peak

load conditions and frequently are placed on cold shutdown" (R. 396, 829).

The disparity in transmission facilities is of paramount significance since Gainesville proposes to protect against any generating deficiency on its system by relying upon Florida Power's backbone transmission network for emergency backup service. As previously noted, Florida Power owns and operates a $65 million transmission network at an annual cost of $13 million a year; whereas Gainesville does not have and does not propose any transmission except a loop around the City and a radial line to connect with Florida Power. Staff engineering witness Braitman, in his direct testimony, acknowledged the importance of transmission in "achieving reliability" by handling "emergency flows resulting from facility outages". On cross examination, he said, "in coordination, one of the biggest problems that individual systems have to work on is trying to achieve equity in the sense that the system that is providing a greater share of transmission be somehow compensated for it" (R. 1329, 1403).

Gainesville's principal witness was Mr. Joseph L. Benson, a consulting engineer formerly on the Staff of the Federal Power Commission. In his prepared direct testimony, Mr. Benson testified: "Gainesville needs and wants the Commission to direct Florida Power . . . to supply emergency backup service to Gainesville in the magnitude of Gainesville's largest generating unit or the capacity of the interconnection, whichever is smaller" (R. 308).

Mr. Ebaugh, the consulting engineer who since 1952 has designed the Gainesville system, explained that emergency backup service from Florida Power should eliminate the possibility of any generating deficiency on the Gainesville

system (R. 129-31). Mr. Kelly, manager of the Gainesville system, testified that the connection would provide Gainesville with instantaneous emergency backup service at least equal to the load on its largest 50 mw generator (R. 215-7). At the hearing before the Commission, Gainesville's attorney Mr. Spiegel stated: "We are asking number one, we can live without everything else, but number one, we are asking for emergency backup service" (R. 1683).

Thus, it is unarguably clear that the primary (Gainesville's attorney called it "number one") reason and purpose for Gainesville establishing physical connection with Florida Power's transmission facilities is to have Florida Power supply Gainesville with emergency backup service to protect against any generating deficiency on the Gainesville system.

Gainesville's principal witness, Mr. Benson, explained Gainesville would realize substantial financial savings of about $520,000 a year from a reduction in its installed reserve of generation made possible by Gainesville relying upon Florida Power's transmission facilities for emergency backup service (R. 337-8, 433-4). The $520,000 a year represents the net annual savings to Gainesville after recovering its costs in making the connection. These savings are the difference between the cost of $6.7 million of generation eliminated by the connection less the cost of a $1.5 million transmission line constructed to tap Florida Power's backbone transmission network (R. 177-8, 310-11, 337-38).

Mr. Benson testified Gainesville can also save an additional $100,000 a year in fuel costs by purchasing approximately 50% of its annual energy requirements from Florida Power's larger, more efficient generators (R. 315-6).

The evidence established irrefutably that emergency backup service will be a one way service from Florida Power to Gainesville (R. 852-4, 951-2). The Presiding Examiner explained that Gainesville can not reciprocate because the City's three largest generators "at best"[4] can supply an inadvertent or instantaneous energy transfer of only 6 mw, 3mw and 2.5 mw. The Court of Appeals agreed with the Presiding Examiner that these amounts are too insignificant to have meaning or value to Florida Power, which must have emergency power instantaneously available (spinning reserve) to withstand outages of more than 400 mw and which allows a 30 to 40 mw margin of error in the calculations of its hourly requirements for spinning reserve (R. 4027). The Court of Appeals properly recognized (in ft. 10), "it is totally unrealistic to consider the City's system a significant power source [for Florida Power]."

Because Gainesville at all times will be relying upon Florida Power's transmission facilities for a minimum[5] of 50 mw of emergency backup service (whether or not energy is being transferred) to the same extent as will Florida Power for its much larger requirements and be-

[4] The "at best" refers to after allowing 20% extra for an alleged faster rate of response for Gainesville's small generators. The figures for Gainesville's capability to supply instantaneous emergency service are determined by taking 10% of the size of the unit and adding 20% for the alleged faster rate of response. The 10% is the spinning reserve capability (i.e. the ability to supply an instantaneous transfer of energy) of units 75 mw and smaller according to the rules of the Florida Operating Committee consisting of Florida Power and the four other major utilities in peninsular Florida. For example, Gainesville's largest 50 mw generator has a spinning reserve capability of 5 mw (i.e. 10%) plus 1 mw for the alleged faster rate of response (i.e. 20% of the 5 mw) for a total of 6 mw.

[5] Actually Gainesville will receive instantaneous emergency backup service of 60 mw, the capacity of the connection, rather than 50 mw, the capacity of its largest generator. During an emergency the connection by overloading may supply even more than 60 mw (R. 4531).

cause Gainesville can not reciprocate in supplying emergency backup service, Florida Power proposed Gainesville pay its fairly allocated share of the cost of owning and operating Florida Power's backbone transmission network. Based upon 1970 load projections, Gainesville's fairly allocated share of the cost was computed to be $3.08 per kw per year times the 50 mw which Gainesville "needs and wants" and which is Gainesville's "number one" requirement. This would amount to about $154,000 a year (R. 959). Payment by Gainesville of this share of Florida Power's costs would be far less than the financial benefits of more than $620,000 a year which Gainesville, according to its principal witness Mr. Benson, will derive from the connection (R. 177-8, 337-8, 432-3).

The Court of Appeals properly agreed with the Presiding Examiner that it is necessary to have some arrangement to compensate for services rendered in excess of services received. In lieu of a cost allocation per kw per year as proposed by Florida Power, the Presiding Examiner recommended a sharing of benefits with the party receiving the greater benefit compensating the party less advantaged by an annual payment in the amount of 50 percent of the difference in total operating benefits (R. 4034).

Remarkably, and in spite of the fact emergency backup service is the primary ("number one") purpose and function of the connection, the Commission provided no compensation whatsoever for emergency backup service, yet it prescribed compensation for every other conceivable service across the connection.[6] In the case of other serv-

[6] See paragraphs 7(b), (d), (f), (g) and (8) of the Commission's Order which prescribe charges or sharing benefits whenever there is a sale or exchange of generating capacity or energy (R. 4488-9). The Commission relieved Gainesville of having to reimburse Florida

ices, the Commission's formula for compensation is based for the most part upon a sharing of benefits.

The Commission prescribed compensation for energy delivered during an emergency,[7] but erred in failing to recognize that emergency backup service is not the supplying of energy but is the furnishing of capacity in a state of readiness capable of supplying instantaneously at any instant of the day or night the energy required to protect against loss of a system's largest generator. Emergency backup service is the fire department. It is the equipment installed and in a continuous state of readiness to meet any generating deficiency. Gainesville wants to rely at all times upon Florida Power's backbone transmission network for emergency backup service whether or not energy is being transferred. Emergency energy is the "water" used to put out the "fire". The Commission ordered Gainesville to pay for the "water" but relieved Gainesville from all responsibility to contribute to the cost of the fire department.

The Court of Appeals properly recognized that the connection is not necessary or appropriate in the public interest insofar as the public served by Florida Power is concerned and will be an undue burden upon Florida Power if Florida Power and its customers have to bear the allo-

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Power for the expense of frequency control (para. (8)) when Florida Power pointed out the reimbursement would be too insignificant to justify the expense of preparing and administering a rate schedule (R. 4534).

[7] In paragraph 7(e) and (g) (1) of its Order, the Commission provided for energy transferred during the first 60 minutes of an emergency to be returned in kind or paid for at 4 mills per kwh or the seller's fuel cost plus 10%, whichever is less. As noted above, Gainesville at all times will be relying upon Florida Power for emergency backup service whether or not energy is being transferred. The transfer of energy will be relatively unimportant. At 4 mills per kwh, 50 mw for one hour represents only a $200 transaction.

cated fixed cost and carry the entire responsibility for providing the extremely valuable service of emergency backup service. The Court remanded the case to the Commission to fix some formula for reasonable compensation. The Court did not order that Gainesville be assessed for benefits received as well as reimbursement for costs, or that compensation be based on the relative benefits rather than the relative burdens. The Court left to the discretion of the Commission whether the formula should be based upon an allocation of costs or a sharing of benefits or something completely different. The case is brought to this Honorable Court without the Commission having made any attempt to fix a formula to provide reasonable compensation for emergency backup service.

ARGUMENT

I.

THE DECISION BELOW IS CLEARLY CORRECT.

It would seem obvious the Court of Appeals was clearly correct in remanding the case to the Federal Power Commission to fix some formula to compensate Florida Power for emergency backup service. Section 202(b) of the Federal Power Act requires as pre-conditions to a forced interconnection express findings by the Commission that the connection is necessary or appropriate in the public interest and not an undue burden upon Florida Power. The Court of Appeals properly concluded these statutory pre-conditions are not met without some formula to provide Florida Power with the reimbursement reasonably due it.

The decision does not infringe upon the discretion of the Commission or interfere with its exercise of whatever expertise it may have to determine reasonable compensa-

tion. The Court merely decided, and quite properly, that the Commission can not abdicate its statutory duty and responsibility, and do nothing. The decision requires of the Commission only that it act and carefully preserves to the Commission complete freedom to act, in the first instance, in any way that it may deem best.

The decision most certainly does not impose upon Gainesville a heavy "value" charge to obtain an interconnection. Gainesville's own estimate of its annual savings and financial benefits is $620,000. It should be noted that this figure is net, after, and not before, Gainesville has recovered its entire estimated cost for making the connection. Florida Power proposed an annual charge of $154,000 a year, which was based upon an allocation of costs and was not based upon benefits or the value of services received by Gainesville.

The decision most assuredly would not impose a discriminatory charge upon Gainesville. Where Florida Power has connections with other systems such as Florida Power & Light Company, Tampa Electric Company and Orlando Utilities Commission which do not provide compensation for emergency backup service, it is because each participating system has generation and through transmission facilities capable of supporting the other system. In these other interconnections emergency backup service is not a one way service because of this mutual capability to serve each other. However, in the Gainesville-Florida Power situation failure to provide any formula for compensation discriminates against Florida Power and its customers because the absence of mutuality in facilities and service capability imposes upon Florida Power the whole cost and the entire responsibility for emergency backup service.

II.

THE PETITION FOR WRIT OF CERTIORARI IS PREMATURE.

The Petition for a Writ of Certiorari is premature in that it asks this Honorable Court to review an interlocutory order of the Court of Appeals remanding the case to the Federal Power Commission. The Petition attacks the propriety of a compensation formula before the formula has been prescribed by the Commission and reviewed by the Court of Appeals. As stated in *American Construction Co. v. Jacksonville Railway Co.*, 148 U.S. 372, 384, "this court should not issue a Writ of Certiorari to review a decree of the Circuit Court of Appeals on appeal from an interlocutory order, unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." See *Brotherhood of Locomotive Firemen v. Bangor and Aroostook R.R. Co.*, 389 U.S. 327; *Hamilton Shoe Co. v. Wolf Brothers*, 240 U.S. 251, 258.

Until the Commission has acted upon the remand, the administrative remedy and proceedings will not have been exhausted. Obviously, all of Petitioner's reasons and arguments for issuing the writ are mere conjecture and premature except as directed against a compensation formula which the Commission has yet to fix. Absent the formula, it is impossible to know whether it will seriously impair the Commission's efforts to encourage interconnections, threaten to disrupt the entire composition and structure of the electric industry, impose a heavy "value" charge which is not justifiable to join a connection, jeopardize present pooling arrangements, or have any of the other dire consequences such as are prematurely alleged in the Petition. Until the formula is fixed and the administrative proceedings concluded, it is impossible for this Honorable Court to know whether there is a sufficient question of federal law, public interest or public policy to justify issuance of a writ of certiorari.

III.

THERE IS NO IMPORTANT QUESTION OF FEDERAL LAW, PUBLIC INTEREST OR PUBLIC POLICY.

The decision of the Court of Appeals does not present any important question of federal law, public policy or public interest justifying the issuance of a writ of certiorari by this Honorable Court. Allegations and argument to the contrary in the Petition for the issuance of a writ are groundless and without foundation. The Court of Appeals' decision does not threaten serious impairment of the Commission's efforts to encourage voluntary interconnection on reasonable terms, will not have an important and far-reaching impact upon the Commission's ability to discharge its responsibility of assuring an abundant supply of electric energy throughout the United States, will not discourage meaningful interconnections and coordination between systems, does not threaten to disrupt the entire composition and structure of the electric industry, and will not jeopardize present pooling arrangements. Nor will the decision impose a heavy "value" charge not heretofore thought justifiable in order to obtain an interconnection.

The truth of the matter is that the files of the Commission, which are a matter of public record, show that the Commission has approved rates to be charged for emergency backup (standby) service very similar to that which Florida Power has requested and for which the Court of Appeals has ordered the Commission to fix some formula.

Southeastern Power Administration (SEPA) is an agency of the United States Government within the Department of the Interior. SEPA, under its rate schedule SC-1 (Revised), approved by the Federal Power Commission on June 29, 1970, charges South Carolina Public Service Authority for emergency standby (backup) service at the rate of $0.25 per kw per billing month ($3.00 per kw

per year), plus 3 cents per kw per calendar day or fraction thereof for such capacity as the Authority uses.

The files of the Commission also show that on June 17, 1968, the Commission approved SEPA's rate Schedule CR-2-A for the supply of standby service to three generation and transmission cooperatives. That Schedule provides for a standby capacity charge of $2.75 per kw per year, plus 4 or 6 cents per kw per day for standby power actually delivered, plus an energy charge of 3.25 mills per kwh for all emergency standby energy. Two cooperatives are each being charged by SEPA for 100 mw and the third for 38 mw of standby capacity.

In the aforementioned order of June 17, 1968 approving SEPA's charges for emergency standby service in its Schedule CR-2-A, the Commission found that SEPA's rates would not be inconsistent with the Flood Control Act of 1944. Section 5 of that Act (16 U.S.C.A. § 825s) requires power and energy to be disposed of in such manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. The Act directs rate schedules shall be drawn having regard to the recovery of the cost of producing and transmitting such electric energy.

Since the Commission has approved these charges for the United States Government acting by and through SEPA, how can it seriously be contended that the decision of the Court of Appeals, ordering the Commission to provide a formula to compensate Florida Power for supplying standby service, presents important questions of federal law, public interest or public policy with such dire consequences as are alleged in the Petition for a Writ of Certiorari?

Rate schedules accepted by the Commission include many others now in effect that provide some form of charge

for emergency backup (standby) service. Examples of such provisions may be found in rates filed by Virginia Electric Power Company, Central Louisiana Electric Company, Inc., Utah Power and Light Company, Nevada Power Company, and Kansas City Power and Light Company.

The Commission attempted to justify its refusal to provide any formula for compensating Florida Power for emergency backup service by espousing for the first and only time[8] the fallacious doctrine that the controlling factor in fixing compensation is not services rendered and facilities supplied but whether burdens or responsibilities are shared in proportion to size (R. 4478). This novel theory is patently erroneous because systems interconnect to obtain from each other services and facilities, and because sharing burdens or responsibilities in proportion to size can be, as it is in this case, utterly meaningless.

Interconnection is an industry practice which has developed voluntarily over many years before and since enactment of the Federal Power Act in 1935. The incentive and motivation for interconnection has been the opportunity for benefits by sharing facilities and interchange of services. The Commission seemingly has always recognized that the function and purpose of interconnection is to obtain services and benefits. In its report known as the *National Power Survey* (1964), the Commission in Part I, Chapter 12, p. 169 *et seq.* described the purposes of the many interconnections voluntarily established by the industry. The *Survey* refers repeatedly to "savings" and to "benefits". At page 173 of Part I of the *Survey*, it is stated that "whenever the parties show a willingness to work

[8] So far as Florida Power can discover, the theory that the determining factor in fixing compensation is not services rendered or facilities supplied but is proportionate sharing of responsibilities according to size has never been suggested by the Commission or by any other regulatory body or by any one in any other proceeding.

together a solution can be found to the complex problems involved *in measuring and equitably sharing the benefits* and burdens involved in such cooperative effort." (Emphasis supplied).

In the only reported decision in which the Federal Power Commission has dealt with rates for services across an interconnection, the Commission, in *Public Service Company of Oklahoma*, 25 F.P.C. 656, 659, 38 PUR (3d) 384, 388, recognized, "By the very nature of any such coordination and interchange arrangement, there is a mutual exchange of services and benefits". For determining rates and charges in an interconnection contract, the Commission said, "a-cost-of-service or rate base type of analysis, other cost analyses, and other considerations, *such as whether there is a sharing of the fruits of coordinated operations*, all play a part". (Emphasis supplied).

Interconnection is a voluntary industry practice motivated by exchange of services and benefits, and not something that has been forced upon the industry by the Commission. In fact, it was not until 1966 in its *Crisp County* decision, 67 PUR (3d) 75, and 1967 in its *City of Paris* decision, 38 F.P.C. 269, 70 PUR (3d) 475, and 1968 in its *Gainesville* decision, 40 F.P.C. 1227, 79 PUR (3d) 269, that the Commission ever was required to assert jurisdiction under Section 202(b) to compel a connection. Actually, in the case of Gainesville, Florida Power has consistently offered Gainesville a voluntary interconnection provided it be on terms fair and reasonable to Florida Power, including reasonable compensation for services rendered in excess of services received (R. 2093-2110).

Furthermore, as previously noted in the Statement of the Case, sharing responsibilities in proportion to size is

utterly meaningless in the Gainesville-Florida Power situation since Gainesville can not supply a significant amount of emergency backup service. The Court of Appeals correctly pointed out, "it is totally unrealistic to consider the City's system a significant power source."

It would seem self-evident that whether and to what extent parties to a connection should be compensated must be determined not from a meaningless proportionate sharing of responsibilities but from the very meaningful services rendered and facilities supplied. The Presiding Examiner and the Court of Appeals were correct in concluding, while public interest and not relative advantages determine whether there should be a connection, "it is still necessary [to effect the interconnection on an equitable basis] that there be some arrangement whereby services rendered in excess of services received can be compensated" (R. 4034).

Whether for any specific interconnection there should or should not be a formula for compensation such as ordered by the Court of Appeals in this case depends upon all of the circumstances of the interconnection under consideration. Each interconnection is a special situation that must be evaluated in the light of its own particular facts. It is, however, generally true, as Commissioner Carl E. Bagge of the Federal Power Commission has pointed out (address before the American Public Power Association, Legal Seminar, on November 13, 1967), a special situation exists when the interconnection is between a large system such as Florida Power (with generators of over 500 mw and a $65 million transmission system) and a small system such as Gainesville (with a largest generator of 50 mw and no transmission):

> "It is, of course, obvious that an isolated system which is unable to install units in excess of 25 or 50

megawatts is not going to be able to take full advantage of the benefit of the new technology. The very fact, however, that its largest units are in this size category tends to produce a reluctance on the part of its larger neighbors to pool with it since the great bulk of the benefits normally will flow to the small system, and from the viewpoint of the larger systems, even if the arrangements between the parties reflect this disparity, the necessary complications of any but the most rudimentary pooling arrangemnets may hardly be worth the effort."

Interconnection between a large system and a small system, or between any two systems, is not discouraged or deterred because there will be a lack of mutuality in services and benefits since this disparity can be and often is taken into account in the terms of the interconnection arrangement. To the contrary, it is the failure, in this case Gainesville's and the Commission's blind refusal, to take into account the disparity in services and benefits that discourages and deters interconnection.

Statements in the Petition for a Writ of Certiorari that none of Florida Power's contracts with other systems contain a comparable charge to that requested of Gainesville, and that it would not be consistent with industry practice to require a "value" charge from Gainesville are completely erroneous. Note the SEPA rates referred to above. Also the record shows that on at least two occasions Florida Power has voluntarily negotiated with other systems financial payments to offset lack of reciprocity of service or mutuality of benefits from an interconnection. One such occasion was with Florida Power & Light Company which paid all of the fixed charges and administrative costs of a connection until it became mutually beneficial. The other occasion was with Gulf Power Company to whom Florida Power still is paying $5.80 per kw per year for 12 mw of

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> "It is, of course, obvious that an isolated system which is unable to install units in excess of 25 or 50

megawatts is not going to be able to take full advantage of the benefit of the new technology. The very fact, however, that its largest units are in this size category tends to produce a reluctance on the part of its larger neighbors to pool with it since the great bulk of the benefits normally will flow to the small system, and from the viewpoint of the larger systems, even if the arrangements between the parties reflect this disparity, the necessary complications of any but the most rudimentary pooling arrangemnets may hardly be worth the effort."

Interconnection between a large system and a small system, or between any two systems, is not discouraged or deterred because there will be a lack of mutuality in services and benefits since this disparity can be and often is taken into account in the terms of the interconnection arrangement. To the contrary, it is the failure, in this case Gainesville's and the Commission's blind refusal, to take into account the disparity in services and benefits that discourages and deters interconnection.

Statements in the Petition for a Writ of Certiorari that none of Florida Power's contracts with other systems contain a comparable charge to that requested of Gainesville, and that it would not be consistent with industry practice to require a "value" charge from Gainesville are completely erroneous. Note the SEPA rates referred to above. Also the record shows that on at least two occasions Florida Power has voluntarily negotiated with other systems financial payments to offset lack of reciprocity of service or mutuality of benefits from an interconnection. One such occasion was with Florida Power & Light Company which paid all of the fixed charges and administrative costs of a connection until it became mutually beneficial. The other occasion was with Gulf Power Company to whom Florida Power still is paying $5.80 per kw per year for 12 mw of

demand for a connection which Gulf Power installed for the benefit of Florida Power (R. 833-834). The fact that there is not a similar charge for connections between Florida Power and other systems where there is relative mutuality in facilities and service capability is totally irrelevant to the Florida Power-Gainesville situation where there will not be mutuality in services rendered and facilities supplied.

It likewise is irrelevant to this proceeding to cite the fact there are other isolated electric systems which are not parties to an interconnection agreement. There may or may not be good reasons why other systems remain isolated. It may or may not be economically practical to interconnect a particular system. If practical to interconnect, a formula for compensation such as that ordered by the Court of Appeals in this case may or may not be called for by the circumstances of the particular situation.

The case for a Florida Power-Gainesville interconnection should be judged only in the light of its own particular facts. When so judged, it is obvious that the decision of the Court of Appeals is clearly correct, that it does not call for a heavy "value" charge, and that it leaves the Commission ample latitude and precedent to fix a compensation formula that will be fair and reasonable to both parties. It is equally obvious that fixing a formula for compensation that will be fair and reasonable to Florida Power and Gainesville does not raise a question of federal law, public interest or public policy justifying the issuance of a writ of certiorari by this Honorable Court.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied. But should this Honorable Court grant the petition for certiorari, it is respectfully requested that this Honorable Court grant Florida Power Corporation's cross-petition for a writ of certiorari filed herewith.

Respectfully submitted,

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